

REMARKS

Reconsideration and withdrawal of the requirement for restriction are respectfully requested in view of the amendment and remarks herewith, which place the application into condition for allowance.

Claims 1-15 are pending. Claims 13-15 are added. No new matter is added.

It is submitted that the claims, herewith and as originally presented, are in full compliance with the requirements of 35 U.S.C. §112. The additions to the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, the additions, support for which is found throughout the specification and from the pending claims, are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

Pursuant to 37 C.F.R. § 1.136(a), Applicants respectfully petition the Assistant Commissioner for Patents to extend the time period for responding to the outstanding Office Action (Restriction Requirement) for three months, from January 20, 2001, up to and including April 20, 2001. A check in the amount of \$870.00 to cover the petition fee is enclosed herewith. Should any additional fee be required for the consideration of this Response, the Assistant Commissioner is authorized to charge such fee against, or credit any overpayment to, Deposit Account No. 50-0320.

The October 20, 2000 Office Action required an election under 35 U.S.C. § 121 from compositions comprising synergistic combinations of herbicides from:

A) a broad spectrum herbicide (glufosinate, glyphosate, imidazolinones, protoporphyrinogen oxidase (PPO) inhibitors,

cyclohexanediones,
heteroaryloxyphenoxypropionic acids), and

B) a second herbicide.

Applicants provisionally elect, with traverse, for further prosecution in this application, the species combination of glufosinate-ammonium and mesotrione, which read upon original claims 1-12 and new claims 13-15. Reconsideration and withdrawal of the restriction requirement are respectfully requested in view of the remarks herewith.

The present invention relates to herbicidal compositions for tolerant or resistant maize crops. In particular, the present invention relates to crop protection products which can be employed against harmful plants in tolerant or resistant crops of maize comprising, as herbicidally active substances, a combination of two or more herbicides.

The present claims, therefore, represent a web of knowledge and continuity of effort that merits examination in a single application. Indeed, all the claims are directed to synergistic herbicide combinations for controlling harmful plants in maize. Further, all the claims are directed to synergistic herbicide combinations from distinct sets of compounds and from a common broad spectrum herbicide (A).

In this regard, the Examiner's attention is respectfully requested to review MPEP § 808.02 which states, "even with patently distinct inventions, restriction is not (emphasis added) required unless one of the following reasons appears:

1. Separate classification;
2. Separate status in the art; or
3. Different field of search[.]"

Contrary to the guideline mandated by the MPEP, the invention involves synergistic herbicide combinations for controlling harmful plants in maize. The utility of all the combinations is based on an inventive concept, to wit, that the combinations are synergistic and useful for the selective control of weeds in maize crops, thereby encompassing the same field of search. Further, the inventive combinations all have component (A) in common, e.g., glufosinate or salts thereof, thereby encompassing, *inter alia*, the same classification and status in the art. Thus, restriction is not appropriate.

Additionally, the Examiner's attention is further respectfully invited to review the text of MPEP § 803 which in part states:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions (emphasis added).

Thus, requirement for restriction ignores the chemical interrelationship of the claimed combinations. Examination of any of these combinations mandates consideration of the patentable elements in all of them.

Enforcing the present restriction requirement would result in inefficiencies and unnecessary expenditures by both the Applicants and the PTO, as well as extreme prejudice to Applicants (particularly in view of GATT, a shortened patent term may result in any divisional applications filed). Restriction has not been shown to be proper, especially since the requisite showing of serious burden has not been made in the Office Action and there are relationships between all of the claimed combinations. Indeed, the search and examination of each combination is likely to be co-extensive and, in any event, would involve such interrelated art

that the search and examination of the entire application can be made without undue burden on the Examiner. All of the preceding, therefore, mitigate against restriction.

In view of the above, reconsideration and withdrawal of the Requirement for Restriction are requested, and an early action on the merits earnestly solicited.

Respectfully submitted,

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